

REMARKS

Summary of the Office Action

Claims 1-35 are cancelled.

Claims 36-70, as renumbered by the Examiner, are pending in the application, with claims 36, 50, 58, and 64 being the independent claims.

Claims 58-70 are cancelled as being directed to a non-elected invention.

Claim 47 is objected to because it recites a redundant limitation.

Claims 36-40, 44, 48, 50-51, and 54-57 stand rejected under 35 U.S.C. § 102(b).

Claims 41-43, 45-47, 49, 52, 53, and 57 stand rejected under 35 U.S.C. § 103(a).

Claim Numbering

The listing of claims beginning on page 2 incorporates amendments to the claim numbers and dependencies to reflect the Examiner's renumbering of the incorrectly numbered claims submitted in the preliminary amendment dated January 31, 2005.

Restriction

Applicants hereby affirm the provisional election to prosecute the invention of claims 36-57 (as renumbered).

Claim Objections

The Examiner objected to claim 47 because it includes a limitation previously recited in claim 45 from which claim 47 depends. Applicants have amended claim 47 to delete the redundant limitation.

Rejections under 35 U.S.C. § 102

1. Claims 36-40, 44, 50-51, and 54-56 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent 5,810,884 to Kim ("Kim"). Specifically, the Examiner alleges that Kim discloses an apparatus comprising "a bar having a (sic) proximal and distal ends and a first bore extending laterally therethrough, and a filament disposed through the first bore...." Applicants respectfully traverse this rejection.

Claim 36 requires, *inter alia*, "a bar having ... a first bore extending laterally therethrough" and "a filament disposed through the first bore". It is respectfully submitted that Kim fails to disclose that the filament is

disposed through the first bore. Kim only discloses a "single steering cable or multiple steering cables rotably attached to the buttressing support member..." See column 13, lines 6-9 and 39-41. See also the top and side views shown in FIGS. 2A and 2B, wherein steering cable 14 is **not** shown passing through buttressing support member 12, but is only shown attached to one side of it. See also the top and side view shown in FIGS. 3A and 3B, wherein steering cables 24 and 26 are **not** shown passing through buttressing support member 22, but are only shown attached to one side of it.

A claim is anticipated only if a single prior art reference discloses each and every element set forth in the claim, in as complete detail as is contained in the claim, and arranged as required by the claim. See MPEP 2131. As discussed above, Kim fails to disclose a filament passing through a bore in the bar and, therefore, fails to disclose every element of claim 36 arranged as required therein. Accordingly, it is respectfully submitted that Kim is distinguished by claim 36.

Moreover, amended claim 36 requires that "the bar is configured to apply an internal compressive force upon a distal lateral surface of a vessel such that a lumen of the vessel is narrowed." Kim fails to disclose that the vessel is narrowed. Compare FIG. 3E of the present application with

FIGS. 16 and 32 of Kim. Accordingly, it is respectfully submitted that Kim is further distinguished by claim 36.

Claims 37-40 and 44 depend from claim 36. It is respectfully submitted, therefore, that Kim is distinguished by claims 37-40 and 44 for at least the same reasons as provided above in respect of claim 36.

Claim 50 recites, *inter alia*, "a bar having ... a first eyelet coupled to the bar" and "a filament disposed through the first eyelet." Kim only discloses that anchoring line 108 is joined to attachment collar 104. See column 16, lines 55-66, and FIGS. 9A and 9B, wherein anchoring line 108 is **not** shown passing through attachment collar 104. Thus, Kim fails to disclose every element of claim 50 arranged as required therein. Accordingly, it is respectfully submitted that Kim is distinguished by claim 50.

Claims 51 and 54-56 depend from claim 50. It is respectfully submitted, therefore, that Kim is distinguished by claims 51 and 54-56 for at least the same reasons as provided above in respect of claim 50.

Accordingly, it is respectfully requested that the rejection of claims 36-40, 44, 50-51, and 54-56 under 35 U.S.C. § 102(b) as being anticipated by Kim be reconsidered and withdrawn.

2. Claims 50-51 and 57 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent 5,411,520 to Nash ("Nash"). Specifically, the Examiner alleges that Nash discloses an "apparatus comprising a bar ... wherein the bar is configured to apply a compressive force upon a distal lateral surface of a vessel." Applicants respectfully traverse this rejection.

As amended, claim 50 recites a bar wherein "the bar is configured to apply an internal compressive force upon a distal lateral surface of a vessel." As defined in the specification at [0014], and internal compressive force is "a force imposed at a location distal of a vessel and occurring in proximal direction toward a skin puncture." Thus, claim 50 requires that the rod be configured apply a force from a point distal of the vessel toward a skin puncture. In contrast, Nash only discloses positioning a closure within a vessel. See FIGS. 22-27. The Nash closure cannot provide an "internal compressive force" as required by claim 50. It is respectfully submitted, therefore, that Nash is distinguished by claim 50.

Claims 51 and 57 depend from claim 50. It is respectfully submitted, therefore, that Nash is distinguished by claims 51 and 57 for at least the same reasons as provided above in respect of claim 50.

Accordingly, it is respectfully requested that the rejection of claims 50-51 and 57 under 35 U.S.C. § 102(b) as being anticipated by Nash be reconsidered and withdrawn.

3. Claims 36 and 48 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent 5,546,178 to Kensey ("Kensey"). Specifically, the Examiner alleges that Kensey discloses an apparatus comprising a bar "configured to apply a compressive force upon a distal lateral surface of a vessel." Applicants respectfully traverse this rejection.

The apparatus of claim 36 is for "facilitating sealing of a puncture formed in a *proximal* lateral surface of a vessel" and requires a bar "configured to apply an internal compressive force upon a *distal* lateral surface of a vessel." As discussed above, this requires the bar to be configured to apply a force from a point distal of the blood vessel in a proximal direction toward a skin puncture. In contrast, Kensey only discloses an apparatus for sealing a percutaneous puncture in tissue such as the peritoneum. The apparatus includes an anchor that is seated against the opening to be sealed. There is no disclosure with respect to sealing a puncture of a blood vessel, or that the anchor is configured to apply a force from a point distal of the blood vessel proximally directed toward a skin puncture. The Kensey

closure cannot provide an "internal compressive force" as required by claim 36. It is respectfully submitted, therefore, that Kensey is distinguished by claim 36.

Claim 48 depends from claim 36. It is respectfully submitted, therefore, that Kensey is distinguished by claim 48 for at least the same reasons as provided above in respect of claim 36.

Accordingly, it is respectfully requested that the rejection of claims 36 and 48 under 35 U.S.C. § 102(b) as being anticipated by Kensey be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 103

1. Claims 41-43 and 57 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of Nash. Specifically, the Examiner alleges that Kim teaches all elements of claim 41, except for the tensioning device which is taught by Nash. Applicants respectfully traverse this rejection.

To present a prima facie case of obviousness, the prior art reference must teach or suggest all of the claim features. MPEP § 2142. Amended claim 41 requires "a tensioning device configured to hold the filament in a tensioned state such that a lumen of the vessel is narrowed." Neither Kim nor Nash teach a tensioning device that tensions

the filament so that the lumen of a blood vessel is narrowed. Therefore, the combination of Kim and Nash cannot disclose, teach, or otherwise suggest this feature of amended claim 41. It is respectfully submitted that the combination of Kim and Nash is distinguished by claim 41.

Claims 42 and 43 depend from claim 41. It is respectfully submitted, therefore, that claims 42 and 43 distinguish the combination of Kim and Nash for at least the same reason as provided above in respect of claim 41.

Moreover, claim 43 requires that "the grip comprises a V-shaped groove formed in an elastomeric material." Nash does not appear to teach what material is used to make torsion spring 142; although it suggests that the material may be plastically deformed (the "remaining material is bent upward, i.e., to form louvers 96." Column 14, lines 39-42). It is respectfully submitted that a material that may be plastically deformed is not generally an elastomeric material. It is respectfully submitted, therefore, that claim 43 further distinguishes the combination of Kim and Nash.

Claim 57 has been amended to require "a tensioning device configured to hold the filament in a tensioned state so that the vessel is narrowed sufficiently to cause coagulation of blood near the puncture." As discussed above in respect of claim 41, this feature of claim 57 is not disclosed, taught,

or suggested by the combination of Kim and Nash. Therefore, it is respectfully submitted that the combination of Kim and Nash is distinguished by claim 57.

Accordingly, it is respectfully requested that the rejection of claims 41-43 and 57 under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of Nash be reconsidered and withdrawn.

2. Claim 49 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kensey in view of Rollero. Applicants respectfully traverse this rejection.

As discussed hereinabove in respect to claims 36 Kensey fails to disclose a bar configured to apply an internal compressive force upon a distal lateral surface of a vessel. Rollero is likewise devoid of any teaching with regard to applying an internal compressive force upon a distal lateral surface of a vessel. Therefore, the combination cannot possibly disclose, teach, or otherwise suggest this feature of claim 36 and the combination is distinguished by claim 36. Because claim 49 depends from claim 48 which depends in turn from claim 36, claim 49 includes all of the limitations of claims 36 and 48. Therefore, the combination of Kensey and Rollero is distinguished by claim 49.

Accordingly, it is respectfully requested that the rejection of claim 49 under 35 U.S.C. § 103(a) as being unpatentable over Kensey in view of Rollero be reconsidered and withdrawn.

3. Claims 45-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of Rollero. Applicants respectfully traverse this rejection.

As provided above in respect of claim 36, Kim fails to disclose a bar having a lateral bore and a filament disposed through the bore. Rollero also fails to teach these features of claim 36 in that Rollero only teaches axial bores 90, 94 through pledget 80. Moreover, neither Kim nor Rollero teach a bar "configured to apply an internal compressive force upon a distal lateral surface of a vessel such that a lumen of the vessel is narrowed" as required by claim 36. Claims 45-57 depend from, and incorporate all of the limitations of, claim 36. Because the combination of Kim and Rollero fails to teach every element of 36, they also fail to teach every element of claims 45-47. Therefore the combination of Kim and Rollero is distinguished by claims 45-47.

Accordingly, it is respectfully requested that the rejection of claims 45-47 under 35 U.S.C. § 103(a) as being

unpatentable over Kim in view of Rollero be reconsidered and withdrawn.

4. Claims 52 and 53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of Rollero. Applicants respectfully traverse this rejection.

Amended claim 50 recites, *inter alia*, a bar "configured to apply an internal compressive force upon a distal lateral surface of a vessel such that a lumen of the vessel is narrowed." As provided above regarding claims 45-47, this feature of claim 50 is not disclosed, taught, or otherwise suggested by the combination of Kim and Rollero. Therefore, the combination is distinguished by claim 50, as well as by claims 52 and 53 which depend therefrom.

Accordingly, it is respectfully requested that the rejection of claims 52 and 53 under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of Rollero be reconsidered and withdrawn.

Conclusion

In view of the foregoing amendments and remarks, applicant submits that the application is in condition for allowance. Applicant respectfully requests that the withdraw claims be rejoined in this application.

Dated: April 26, 2007

Respectfully submitted,

/MJDeHaemerJr#39164/
Michael J. DeHaemer, Jr.
Reg. No. 39,164
Attorney for Applicants

LUCE, FORWARD,
HAMILTON & SCRIPPS, LLP
11988 El Camino Real, Suite 200
San Diego, California 92130
Tel: (858) 720-6300
Fax: (858) 720-6306

3811334.1